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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,892	04/28/2006	Torben Malykke	828987770	1748
22242 7590 12/06/2007 FITCH EVEN TABIN AND FLANNERY 120 SOUTH LA SALLE STREET SUITE 1600 CHICAGO, IL 60603-3406			EXAMINER ROSENBAUM, MARK	
			ART UNIT 3725	PAPER NUMBER
			MAIL DATE 12/06/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary

Application No.

10/577,892

Applicant(s)

MALYKKE, TORBEN

Examiner

Mark Rosenbaum

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17-30 is/are rejected.
- 7) ☒ Claim(s) 16 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/28/06</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Objections

Claim 16 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim must be in alternative form. See MPEP § 608.01(n).

Accordingly, the claim has not been further treated on the merits.

Claim Rejections - 35 USC § 112

Claims 4,8,9,14,17,21,28,29,30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 4, the 'e.g.' phrase is indefinite as it is not clear what is being positively claimed. Claim 8, 'the inner knife and the outer knife', claim 14 'the set of conic knives' have no proper antecedent basis. In claim 17, what apparatus does 'or similar' include? In claim 21, 'such as a funnel' is indefinite as it is not clear what is being positively claimed. In claim 28, what apparatus elements are being claimed? In claim 29, a 'use' claim should not depend on an apparatus claim. In claim 30, is the driving device the same as that of claim 10?

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,5,12,13,17,21,26-29 are rejected under 35 U.S.C. 102(b) as being anticipated by the Japanese '206 publication (Japan). Japan shows a coffee dispensing unit capable of determining container size and subsequently filling the container.

Claims 1,2,5,12,17,21,26,28 rejected under 35 U.S.C. 102(b) as being anticipated by Devale. This patent shows a beverage dispensing unit capable of determining container size and subsequently filling the container.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Japan. The use of a locking device to avoid spillage is well known in the container filling art and of no patentable merit.

Claims 4,6-11,14,15,18,19,30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japan as applied to claim 1 above, and further in view of the British '611 patent (British). Japan merely shows a coffee dispensing machine. This may result in old/stale coffee. British solves this problem by disclosing coffee grinding apparatus that can be used to deliver fresh ground coffee to a container. In order to deliver fresh ground coffee, it would have been obvious for one of ordinary skill in the art to modify Japan by providing coffee grinding means, taught to be desirable by British.

Note that the remaining limitations of the claims e.g. use of a closing device, would then have been obvious modifications by one in the container filling art.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Japan as applied to claim 1 above, and further in view of the Japanese '426 publication. Japan does not use anti-vibrating means which may result in unwanted apparatus/beverage movement. Japan '426 solves this problem by disclosing similar apparatus including the use of anti-vibrating means. In order to prevent any unwanted apparatus/beverage movement, it would have been obvious for one of ordinary skill in the art to modify Japan by providing anti-vibrating means, taught to be desirable by Japan '426.

Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japan as applied to claim 1 above, and further in view of the German '413 publication (Germany). Japan does not provide for anti-static means which may result in disrupted material flow. Germany solves this problem by showing similar apparatus including the use of anti-static means. In order to promote proper material flow, it would have been obvious for one of ordinary skill in the art to modify Japan by providing anti-static means, taught to be desirable by Germany. The exact type of anti-static means used would then have been an obvious design choice only.

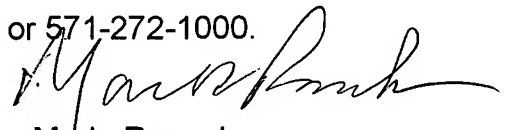
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Rosenbaum whose telephone number is 571-272-4523. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Mark Rosenbaum
Primary Examiner
Art Unit 3725

MR